

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.753/Del/2023
Assessment Year: 2012-13

Javed Khan,
H.No.35, Street No.4,
Aram Park, Shastri Nagar,
Delhi – 110 031.

Vs ITO,
Ward-35(1),
New Delhi.

PAN: BMXPK5858C

(Appellant)

(Respondent)

Assessee by : Shri Javed Rasheed Siddiqui, Advocate
Revenue by : Shri Om Parkash, Sr. DR

Date of Hearing : 14.09.2023
Date of Pronouncement : 20.09.2023

ORDER

This appeal by the assessee pertaining to Assessment Year 2012-13 is filed against the order of the Id.CIT(A), National Faceless Appeal Centre, Delhi, dated 19.01.2023. The assessee has raised the following grounds of appeal:-

"1. The Ld. CIT (A) has wrongly dismissed the assessee's appeal on the basis of wrong interpretation of facts from partial submission that the assessee was in tax bracket as the tax was being deducted and the appellant was well aware of it, and the assessee has not revealed the correct income under his salary received and the exact amount of Tax deducted. In case the Ld. CIT(A) was desirous to know these figures he should ask the assessee for submission of these figures, hence the Ld. CIT(A) was not justified by dismissing the appeal. The assessee has never stated in his submissions that during F.Y. 2011-12 tax had been deducted from his salary but the Ld. CIT (A) has concluded it. Hence the appeal is being filed.

2. The Ld. CIT(A) is not correct and justified by not treating the mistake of DDO i.e. quoting of wrong PAN on the I.T. Portal and in his account related to the assessee as a reasonable cause in terms of S. 273B of the Act which is the only and main root cause due to which the assessee remained fail in filling the IT return u/s 139 of the Act. In view of this submission the assessee may please be allowed the relief accordingly. Hence the appeal is being filed.

3. In this case the assessment order u/s 144/147 dated 23/12/2019 had been passed by the ITO ward 52(4) Delhi. The Ld. ITO ward ITO 52(1) Delhi had passed the Penalty order dated 03.03.2022 u/s 27 IF without having the jurisdiction over the assessee PAN. This ground could not be raised before the CIT(A) with the reason that not only the assessee but also the I.T. department were not aware about this fact of correct jurisdiction. It has come to the notice of the assessee when the ITO ward 52(1) Delhi informed vide E MAIL dated 13/12/022 that the correct jurisdiction is with ITO ward 35(1) Delhi .The copy of this E mail is annexed as ANNEXURE-1 for ready reference. It is therefore humbly requested that in view of justice this additional ground of appeal may please be accepted and allow the relief accordingly. Hence the appeal is being filed.

4. In the assessment order u/s 144/147 dated 23/12/2019 for AY 2012-13 by which the penalty proceeding u/s 271F was initiated, though the endorsement was made for the assessee but this endorsement does not bear the signature of AO. It implies that the Ld. AO has not informed the assessee regarding this order. Further this unsigned order has never been served to the assessee. The Ld. AO has accepted this fact in order u/s 271(1)(c) dated 12/03/2022 for AY 2012-13. The copy of order is annexed as Annexure-2. As this fact came to the knowledge after receiving copy of order from ITO Ward 52(1) Delhi on 23/11/2022 while the appeal has been filed on 02/04/2022, this ground could not be raised before CIT(A). The copy of email received from ITO 52(1) is enclosed as Annexure-3. It is therefore humbly requested that in view of justice this additional ground of appeal may please be accepted and allow the relief accordingly. Hence the appeal is being filed.”

2. The facts giving rise to the present appeal are that in this case the assessee had not filed his return of income. The assessment was completed u/s 144 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') at Rs.14,61,000/-. Penalty proceedings u/s 271F of the Act were separately initiated. Thereafter, the AO, after giving opportunity to the assessee, imposed a penalty of Rs.5,000/- u/s

271F of the Act. Aggrieved against this, the assessee preferred appeal before the Id.CIT(A) who also sustained the penalty.

3. The Id. Counsel for the assessee argued that the authorities below were not justified in imposing the penalty and sustaining the same. He contended that there was reasonable cause for not filing the return of income. He contended that he had given correct PAN to the DDO as the assessee is a government employee serving in Railway Protection Force as Head Constable. Due to the mistake of the DDO, the assessee could not file his return in time. Therefore, the penalty is not sustainable.

4. On the other hand, the Id. DR opposed the submissions of the Id. Counsel of the assessee and supported the orders of the authorities below.

5. I have heard the rival contentions and perused the material available on record. It is seen from the record that the assessee has categorically stated that owing to the mistake by the Drawing and Disbursing Officer (DD), the PAN was not correctly mentioned in 26AS and the necessary correction was not made despite requests made by the assessee. The authorities below have not adverted to this submission of the assessee and verified the correctness of the claim of the assessee that DDO had committed a mistake. Therefore, on account of non-availability of correct data, the assessee was precluded from filing the return of income. Therefore, considering the totality of the facts, I am of the considered view that there was a reasonable cause for not filing the income-tax return as envisaged u/s

139 of the Act and the default was bona fide. Therefore, the impugned penalty is unjustified. I, therefore, direct the AO to delete the same. The grounds raised by the assessee are allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20.09.2023.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Dated: 20th September, 2023.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi